IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8791 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESH.V.RATHOD - Petitioner(s)
Versus
STATE OF GUJARAT THRO' THE DY.SECRETARY & 3 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
MR NEERAJ SONI A.G.P. for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.
MR DM AHUJA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 02/08/2007

ORAL JUDGMENT

1. **RULE**. Mr. Neeraj Soni learned A.G.P., waives service of rule on behalf of respondent no. 1. At the request of learned advocates for the respective parties,

the matter is taken up for final hearing today itself.

2. The petitioner has challenged the order passed by respondent no. 1 dated 29th January, 2007 in Appeal No. 246/2005, whereby respondent no. 1 has confirmed the order passed by respondent no. 2 dated 27th October, 2005, whereby, he granted fair price shop in favour of respondent no. 3. The petitioner had applied for allotment of fair price shop in pursuance of the advertisement dated 6th February, 2005. It is the say of the petitioner that in accordance with the requirements, necessary documents were placed along with the application. However, ultimately, it was respondent no. 3 who was selected for the allotment by respondent no. 2, completely ignoring the claim of the petitioner without any valid reasons for it. He, therefore, challenged the order of respondent no. 2 in appeal, but the same has been dismissed by respondent no. 1 by the aforesaid order. Hence, this petition.

3. I have closely perused the record of the petition. I have also heard the learned advocates for the respective parties. According to Mr. Prajapati learned advocate for the petitioner, both the impugned orders have been passed on different grounds. According to him,

the claim of the petitioner for allotment is in accordance with the requirements of the scheme known as Pandit Dindayal Grahak Bhandar. The petitioner has contended that he is the local resident of Naroda. He is also having shop and he is educated unemployed person. He, therefore, deserves to have allotment of fair price shop. According to him, respondent no. 3 is not a local resident of the place. Mr. Soni learned A.G.P., has however, opposed the petition and has submitted that the order of respondent no. 1 is just and proper.

4. I have carefully considered the submissions. There is some substance in the submission of Mr. Prajapati. Order of respondent no. 2, which is in the form of communication dated 27th October, 2005 addressed to the petitioner, states that his application has been rejected for the reason that the tax bill produced by him was in respect of the residence. As against that respondent no. 1 has held that the petitioner has not produced necessary evidence to establish that he is a local resident. It however, appears that local inspection was made and the petitioner had shown his premises where he intended to do business. According to the petitioner, merely because it was situated in the residential locality, there was no reason for the respondent

authority to hold that the petitioner did not have any premises to accommodate his shop. This reason has not weighed with respondent no. 1. It is the say of the petitioner that the petitioner has produced ample evidence to show that he was a local resident and also had facility to run the shop. In view of the aforesaid conflicting findings, on which the application of the petitioner is rejected, these orders are required to be quashed and the matter would is required to be remitted to respondent no. 4 for his reconsideration. Hence, the impugned order of respondent no. 1 is quashed and set aside. The matter is remitted to him for his reconsideration. He may also grant personal hearing to the petitioner after giving due intimation to the petitioner and the proceedings to be completed as early as possible and in any case not later than 31st October, 2007.

5. The petition is, therefore, allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[Akshay H. Mehta, J.]

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